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8 M. K.,  
9 Plaintiff,  
10 v.  
11 GOOGLE LLC, et al.,  
12 Defendants.

Case No. 21-cv-08465-VKD

**ORDER RE GUARDIAN AD LITEM  
APPLICATION**

Re: Dkt. Nos. 38, 56

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14 Plaintiff M.K., a minor, sues Google, LLC and Fremont Unified School District on federal  
15 and state law claims related to violations of his privacy. Dkt. No. 1. On June 13, 2022, M.K. filed  
16 an initial application to appoint Melanie Kirksey, his mother, as his guardian ad litem. Dkt. No.  
17 38. The Court ordered plaintiff to provide additional information regarding the application. Dkt.  
18 Nos. 40, 49. M.K. now asks the Court for a second time to appoint Ms. Kirksey as his guardian ad  
19 litem. Dkt. No. 56.

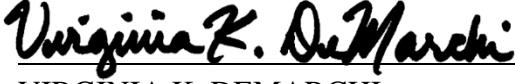
20 Rule 17 provides that “[a] minor or an incompetent person who does not have a duly  
21 appointed representative may sue by a next friend or by a guardian ad litem.” Fed. R. Civ. P.  
22 17(c)(2). “The court must appoint a guardian ad litem—or issue another appropriate order—to  
23 protect a minor or incompetent person who is unrepresented in an action.” *Id.* An individual’s  
24 capacity to sue is determined by the law of the individual’s domicile. Fed. R. Civ. P. 17(b). In  
25 California, an individual under the age of 18 is a minor. Cal. Fam. Code § 6500. A minor may  
26 bring suit as long as a guardian conducts the proceedings, and the Court may appoint a guardian  
27 ad litem to represent a minor’s interests in the litigation. Cal. Fam. Code § 6601; Cal. C.C.P.  
28 § 372(a); *Williams v. Super. Ct.*, 147 Cal. App. 4th 36, 46-47 (2007).

1        “A court has broad discretion in ruling on a guardian ad litem application.” *Williams*, 147  
2 Cal. App. 4th at 47. In determining whether to appoint a guardian ad litem, the Court must  
3 consider whether the minor and proposed guardian have divergent interests. Cal. C.C.P.  
4 § 372(b)(1). “When there is a potential conflict between a perceived parental responsibility and an  
5 obligation to assist the court in achieving a just and speedy determination of the action, a court has  
6 the right to select a guardian ad litem who is not a parent if that guardian would best protect the  
7 child’s interests.” *Williams*, 147 Cal. App. 4th at 49 (internal quotations and citation omitted).  
8 “[I]f the parent has an actual or potential conflict of interest with his child, the parent has no right  
9 to control or influence the child’s litigation.” *Id.* at 50. “In the absence of a conflict of interest,  
10 the appointment is usually made on application only and involves little exercise of discretion.” *Id.*  
11 at 47 (internal ellipsis, quotations and citation omitted); *see also Student A v. Berkeley Unified*  
12 *Sch. Dist.*, No. 17-cv-02510-MEJ, 2017 WL 2171254, at \*1 (N.D. Cal. May 17, 2017) (“When  
13 there is no conflict of interest, the guardian ad litem appointment is usually made on ex parte  
14 application and involves minimal exercise of discretion by the trial court.”) (internal quotations  
15 and citation omitted). Additionally, when “a parent brings an action on behalf of a child, and it is  
16 evident that the interests of each are the same, no need exists for someone other than the parent to  
17 represent the child’s interests under Rule 17(c).” *J.M. v. Liberty Union High Sch. Dist.*, No. 16-  
18 cv-05225-LB, 2016 WL 4942999, at \*1 (N.D. Cal. Sept. 16, 2016) (quoting *Gonzalez v. Reno*, 86  
19 F. Supp. 2d 1167, 1185 (S.D. Fla. 2000), *aff’d* 212 F.3d 1338 (11th Cir. 2000)).

20        Here, the record presented indicates that M.K. is a minor child and that Ms. Kirksey, as his  
21 natural mother, is competent and willing to serve as M.K.’s guardian ad litem. Dkt. No. 56. As  
22 nothing in the record indicates a conflict of interest between Ms. Kirksey and M.K., or any other  
23 reason why the present application should not be granted, the Court grants plaintiff’s motion and  
24 appoints Ms. Kirksey as guardian ad litem for M.K.

25        **IT IS SO ORDERED.**

26        Dated: July 19, 2022

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VIRGINIA K. DEMARCHI  
United States Magistrate Judge